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From:

Sent: Monday, March 15, 2010 5:40:39 PM

To:

Cc:

Subject: FW: Netting case - members of consolidated group not same TP

Attachment: Energy EastCorp V. United States

Hi

forwarded your memo in the , case on 6621(d) concluding that the interest for overpayments from in pre-merger years could be netted with the interest payment for underpayments of in post-merger years.

This case below, Energy East Corporation, from the Federal Claims court seems to come to a different conclusion. In the case below, the corporations survived the merger unlike the case that merged into with surviving. I don't know if that makes a difference. Could we talk to see if we still think can use the overpayments by prior to the merger for interest netting after the Energy East decision? I suppose we don't want to take a position that is inconsistent with the court decision. But I would like to hear from you whether there is an IRS position on this.

Thank you.